IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 656 of 2007

BADRI & ORS.
V/S
ADDL.CIVIL JUDGE,NO.2,(J.D.),BHILWARA&OR

Mr. KC SAMDARIYA, for the appellant / petitioner

Mr. MANISH PITALIYA, for the respondent

Date of Order : 17.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Vide order dated 13.2.2007, one opportunity was granted to the petitioner to lead evidence on 22.2.2007 subject to payment of cost. It was inter-alia directed in the order dated 13.2.2007 that "if for any reason of the Court the statement of witnesses are not recorded on that day, then the learned trial Court shall record their attendance, and bind them to appear on the next date of hearing".

The case of the petitioner now is that he produced all the witnesses on 22.2.2007, and their affidavits were also filed. However, the cross-examination of the witness Purshottam could not be done that day, and he was bound down to appear on the next date being 17.4.2007, on which date again he did not appear, and instead of enforcing his attendance, the evidence of the petitioner has been closed. According to the learned counsel for the petitioner, this

is clearly contrary to the directions given in the order dated 13.2.2007.

Learned counsel for the respondent submits that he has no objection if attendance of Purshottam is procured by process of Court.

Accordingly, it is directed that the learned trial Court shall procure attendance of Purshottam and permit the plaintiff to cross-examine him, and thereafter only, the matter will proceed further.

The other grievance raised by the petitioner is that one of the witnesses produced by the petitioner has turned hostile in cross-examination, and the learned trial Court declined the permission to petitioner to cross-examine that witness, which requires interference.

In my view, this aspect need not be gone into in this writ petition, as the petitioner may raise ground in appeal if necessity so arises and if the petitioner so stand advised.

The writ petition is, accordingly disposed of as above with the clarification that the evidence already produced by the petitioner in compliance of the order dated 13.2.2007 shall also be read as evidence on record.

(N P GUPTA),J.

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